

SECOND REGULAR SESSION

HOUSE BILL NO. 1067

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BRAY.

Pre-filed December 3, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2909L.01I

AN ACT

To amend chapter 290, RSMo, by adding thereto six new sections relating to certain rights and obligations of employers and employees in causes of action for wrongful discharge.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 290, RSMo, is amended by adding thereto six new sections, to be known as sections 290.155, 290.160, 290.165, 290.170, 290.175, and 290.180, to read as follows:

290.155. As used in sections 290.155 to 290.180, the following terms mean:

2 (1) "Constructive discharge", the voluntary termination of employment by an
3 employee because of any act or omission of the employer that an objective, reasonable
4 person would find so intolerable that voluntary termination by the employee is reasonable;
5 (2) "Discharge", a constructive discharge or any involuntary termination of a
6 person's employment by the employer;

7 (3) "Employee", a person who works for another for hire. Employee does not
8 include the Internal Revenue Services' definition of independent contractor, elected
9 government official in Missouri, or employee of the United States government;

10 (4) "Employee benefits" includes, but is not limited to, employee welfare and
11 pension plans;

12 (5) "Employer", any person, corporation, partnership, or professional association
13 who employs fifteen or more employees for each working day in each of twenty or more
14 calendar weeks in the current or preceding year. Employer includes any agent of the
15 employer acting, directly or indirectly, in the interest of the employer, as well as the state,
16 counties, municipal corporations, townships, school districts, and any other political
17 subdivision of government. The term employer does not include the United States or any

18 **corporation wholly owned by the government of the United States;**

19 **(6) "Probationary period", unless otherwise specified by the employer, the**
20 **probationary period of time during which an employee may be terminated at will is six**
21 **months; except that, a probationary period specified by the employer may not be longer**
22 **than twelve months from the date of employment;**

23 **(7) "Public policy", the principle which holds that no one can lawfully do that**
24 **which tends to be injurious to the public or against the public good;**

25 **(8) "Written personnel policy" or "handbook", any published manual, personnel**
26 **procedure, policy, handbook, guideline, or other document setting forth terms of**
27 **employment, rights or benefits of employees, or other matters relating to the terms and**
28 **conditions of employment of all or any employees, including, but not limited to, causes or**
29 **procedures for discipline and discharge of employees.**

290.160. 1. A discharge is wrongful, if:

2 **(1) It was in retaliation for the employee's refusal to violate law or public policy,**
3 **or for complaining about, or reporting to the employer or a third party, a violation of law**
4 **or public policy;**

5 **(2) The employer, in executing an involuntary or constructive discharge, violates**
6 **the express provisions of its own written personnel policy or handbook; or**

7 **(3) An employer substantially deviates from its customary practice or standard**
8 **operating procedure used for dismissal, whether or not an employee handbook exists.**

9 **2. The employee has the burden of proof in any action brought pursuant to sections**
10 **290.155 to 290.180.**

1 **290.165. 1. Employees may bring a cause of action pursuant to subdivision (2) or**
2 **(3) of subsection 1 of section 290.160, regardless of whether the written personnel policy**
3 **or handbook constitutes a valid and binding contract, and regardless of whether the**
4 **employee had actual knowledge of the policy, handbook, practice, or procedure.**

5 **2. An employer may amend or revoke a written personnel policy or handbook;**
6 **except that the employer shall give reasonable advance notice to all employees of any**
7 **proposed amendment to, or revocation of, a written personnel policy or handbook before**
8 **the amendment or revocation becomes effective.**

9 **3. Sections 290.155 to 290.180 do not create a new cause of action for unlawful**
10 **discrimination based on race, national origin, sex, age, disability, creed, religion, color, or**
11 **any other ground of discrimination. Such claims shall be brought pursuant to existing**
12 **state and federal anti-discrimination statutes.**

13 **4. Sections 290.155 to 290.180 shall not be construed to amend or negate the terms**
14 **of any written collective bargaining agreement.**

15 **5. Public employees may seek relief pursuant to sections 290.155 to 290.180 only**

16 after such employees have fully exhausted their administrative or civil service remedies
17 pursuant to applicable state or local statutes or ordinances. Employees need not appeal
18 the administrative or civil service determination to the circuit court to avail themselves of
19 a cause of action pursuant to sections 290.155 to 290.180.

20 6. If an employer, public or private, maintains written internal procedures, other
21 than those formulated pursuant to state or federal anti-discrimination statutes, under
22 which an employee may appeal a discharge within the organizational structure of the
23 employer, the employee shall first exhaust those procedures prior to filing an action
24 pursuant to sections 290.155 to 290.180. The employee's failure to exhaust available
25 internal procedures is a defense to an action brought pursuant to sections 290.155 to
26 290.180. If the employer's internal appeal procedures are not completed within ninety days
27 from the effective date of the discharge, for purposes of this subsection, the employer's
28 internal procedures shall be considered exhausted and the employee may file an action
29 pursuant to sections 290.155 to 290.180. The limitation period in section 290.170 shall be
30 tolled while the employer's internal procedures are being exhausted, but such toll period
31 shall not exceed one hundred eighty days from the effective date of discharge.

32 7. If the employer maintains written internal procedures under which an employee
33 may appeal a discharge within the organizational structure of the employer, the employer
34 shall, within seven days of the date of the discharge, notify the discharged employee of the
35 existence of such procedures and shall supply the discharged employee with a copy of
36 them. If the employer fails to comply with this subsection, the discharged employee need
37 not comply with subsection 6 of this section.

38 8. Sections 290.155 to 290.180 shall not apply to employees during their
39 probationary period as defined by subdivision (6) of section 290.155.

2 290.170. An action brought by an individual alleging wrongful termination
3 pursuant to sections 290.155 to 290.180 shall be filed within three hundred sixty-five days
3 of the effective date of the discharge.

2 290.175. 1. In a cause of action brought pursuant to subdivisions (2) and (3) of
3 subsection 1 of section 290.160, an employee may be awarded lost back wages and
3 employee benefits from the date of discharge, together with interest thereon; except that,
4 an employee has a duty to mitigate damages. In addition, an employee may be awarded
5 attorneys' fees, out-of-pocket costs of litigation, and relocation expenses.

6 2. An employee may recover punitive damages if it is established by clear and
7 convincing evidence that the employer engaged in fraud, malice, or reckless disregard for
8 the rights of the employee pursuant to subdivision (1) of subsection 1 of section 290.160.
9 Punitive damages are not available for causes of action arising from violations of
10 subdivision (2) or (3), or both, of subsection 1 of section 290.160.

11 **3. In a cause of action brought pursuant to subdivision (1) of subsection 1 of section**
12 **290.160, an employee may be awarded lost back wages and employee benefits from the date**
13 **of discharge, together with interest thereon, as well as attorneys' fees, out-of-pocket costs**
14 **of litigation, and relocation expenses. An employee may also be awarded compensatory**
15 **damages for physical and mental distress occasioned by a violation of subdivision (1) of**
16 **subsection 1 of section 290.160, independent of punitive damages.**

2 **290.180. Any party to an action brought pursuant to sections 290.155 to 290.180**
3 **may demand a trial by jury on any and all claims brought pursuant to sections 290.155 to**
290.180.